

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAJIADO
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO E009 OF 2023



JAVERA SIDDIQUE w/o ARSHAD SHARIF 1ST PETITIONER
KENYA UNION OF JOURNALISTS..... 2ND PETITIONER
KENYA CORRESPONDENTS' ASSOCIATION..... 3RD PETITIONER
VERSUS

ATTORNEY GENERAL OF KENYA..... 1ST RESPONDENT
DIRECTOR OF PUBLIC PROSECUTIONS..... 2ND RESPONDENT
INSPECTOR GENERAL OF THE NATIONAL POLICE SERVICE..... 3RD RESPONDENT
INDEPENDENT POLICING OVERSIGHT AUTHORITY..... 4TH RESPONDENT
NATIONAL POLICE SERVICE COMMISSION..... 5TH RESPONDENT

4TH RESPONDENT'S REPLYING AFFIDAVIT

I **EVANS KIPSANG** of the independent Policing Oversight Authority, Ngong Road and care of **P.O BOX 23035 – 00100 NAIROBI** within the Republic of Kenya, do hereby make oath and state as follows:

1. **THAT** I am an adult and of sound mind, an investigator with the 4th Respondent the investigating Officer in this matter and duly authorized to make oath for and on behalf of the 4th Respondent, conversant with the facts herein and therefore competent to make and depone to this affidavit.
2. **THAT** I have read, understood and where necessary been explained to me by my advocates on record, the petition dated 19th October 2023 together with the Supporting Affidavit of Javeria Siddique and the documents annexed thereto and wish to respond by stating as follows;
3. **THAT** the Authority is mandated under Sections 6 (a) and (b) and Section 25 of the IPOA Act to carry out investigations related to disciplinary or criminal offences committed by any member of the National Police Service and make recommendations.
4. **THAT** on the 24th of October 2022, the 4th Respondent learned of an incident of shooting of Arshad Sharif circulating on social and mainstream media. On its own motion, the matter was registered under reference number **IPOA/CMU/002815 -2022. (Annexed hereto and marked 'EK 1' a copy of the record of the complaint)**

5. **THAT** on the 25th October, 2022 the 4th Respondent received a letter addressed to its chairperson dated 24th October 2022 from the Director of the 2nd Respondent requesting the Authority to institute investigations into the reports which were circulating on social and mainstream media relating to the death of Arshad Sharif. ***(Annexed hereto and marked 'EK 2' is a copy of the letter)***
6. **THAT** pursuant to the 4th Respondents mandate, it commenced independent investigations into the allegations relating to the death of Arshad Sharif.
7. **THAT** upon conclusion of its independent investigations, the 4th Respondent forwarded its duplicate file containing copies of collected evidence, investigation report and recommendations to the 2nd Respondent. ***(Annexed hereto and marked 'EK 3' is a copy of the letter forwarding the file)***
8. **THAT** on the 21st February 2023, the 4th Respondent received a letter dated 21st February 2023 from the 2nd respondent acknowledging the 4th Respondent's letter forwarding the duplicate file and a corresponding report to them.
9. **THAT** in the above stated letter, the 2nd Respondent had identified gaps that it wanted the 4th Respondent to cover.
10. **THAT** the duplicate investigation file was returned to the 4th Respondent who did further investigations and resubmitted the file having covered the points raised by the 2nd Respondent and the same was acknowledged by the 2nd Respondent by stamping on the duplicate copy of the letter. ***(Annexed hereto and marked 'EK 4' is a copy of the letter)***.
11. **THAT** contrary to averments by the Petitioner at paragraph 6 of the Supporting affidavit, the 4th Respondent conducted thorough investigations in accordance to the law and forwarded its file to the 2nd Respondent.
12. **THAT** in response to paragraph 7 of the Supporting affidavit the 4th Respondent will give a status update once it gets directions from the 2nd Respondent.
13. **THAT** in response to the facts raised in the body of the petition in Paragraph 8 and 9 I wish to state that the allegations cannot be attributed to the 4th Respondent.

14. **THAT** in response to Paragraph 11,12 and 13 in the petition, I wish to reiterate the contents of Paragraph 6,7,8,9,10 and 11 herein above.

15. **THAT** in response to the facts /raised in the body of the petition and in particular response to Paragraph 76 I wish to state that the 4th respondent is a stranger to the allegations since they are outside the mandate of the 4th Respondent.

16. **THAT** I swear this affidavit in opposition to the petition dated 19th October 2023 and the prayers therein and pray that the same be dismissed with costs.

17. **THAT** what is stated herein is true to the best of my knowledge, save as to matters deponed to on information, sources whereof have been disclosed and matters deponed to on belief whereupon the grounds have been provided.

SWORN at NAIROBI by the said)

EVANS KIPSANG)

This...5th...day of Jan. 2024)

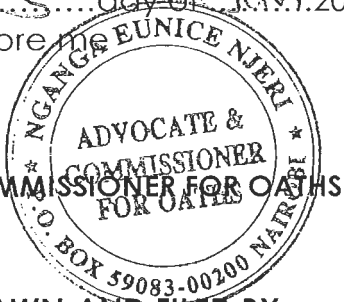
Before me)

)

)

)

COMMISSIONER FOR OATHS)




DEPONENT

DRAWN AND FILED BY:

Festus Kinoti, Advocate

Independent Policing Oversight Authority,

ACK Garden Annex, 2nd Floor, 1st Ngong Avenue,

P. O. Box 23035-00100

NAIROBI

EMAIL: festus.kinoti@ipoa.go.ke

Tel. 0204906237

TO BE SERVED UPON

1. Ochiel J Dudley, Advocate,
House 5, The Crescent, Off Parklands Road,
P.O Box 26586 – 00100,
Nairobi.
ochieljd@gmail.com
0731740766

2. The Hon. Attorney General,
Sheria House, Harambee Avenue,
P.O Box 40112 – 00100,
Nairobi
3. National Police Service
Jogoo House "A" Taifa Road,
P.O Box 44249 – 00100,
Nairobi
4. The National Police Service Commission,
Sky Park Plaza, 5th Floor,
Woodvale Close, Westlands,
P.O Box 47363 -00100,
Nairobi

Complaints

IPOA/CMU/002815-2022

Status	Current Team	Created On	Created By
Submitted to Investigation	Patrick Ronoh	24/10/2022 15:52	Ariya Salat

Complaint Information

COMPLAINANT INFORMATION		Aging by Days	4
Complainant	Complaint Ref. No.	Aging by Weeks	0.00
Magadi Police Station	IPOA/CMU/002815-2022	Aging by Months	0.00
Complaint Category	Complaint Source	Complaint Notes & Activities	
Category one	Notification Of Death		
Specify CIC Team	Social Media		
	Other Complaint Source		
Nature of Offence	Specify Nature of Death		
Death Involving a Police Officer	Death as a result of shooting		
Specify Sexual Offences	Specify Abuse of office and ethics rlted violations		
Specify Assaults and offences endangering life and health	Specify Deprivation of liberty		
Specify Administrative issues	Specify Offences Against Discipline		
State Other			
Complaint within IPOA Mandate	Complaint Nature (Archived)		
Yes	Complaint Nature (Archived)		

This is the EXHIBIT marked as **"EX 1"**
Referred to in the annexed AFFIDAVIT/DECLARATION of
SWORN/DECLARED before me this **5th**
day of **Jan** 20**24** at **Nairobi** in the
Republic of Kenya

Commissioner for Oaths / Notary Public

RAPID ACTIONS

NOTE: Only select these options where a rapid response or an inspections team is URGENTLY required to attend to the situation.

Notify Rapid Response	Notify IRM Team	Elevate Urgent
Yes	No	Complaint to HOC's
		Priority Queue

Incident Details

INCIDENT DETAILS	Feedback(s) to Complainant
	Feedback No.

In cases where ALL incident details are NOT available enter the data into the mandatory fields as follows:

Date & Time of Incident: 01/01/1900 - 00:00

Location Of Incident: N/A

County of Incident: Select option- Unknown

Date and Time of Incident
23/10/2022 08:00

Location of Incident
Magadi Police Station

Date Reported At Authority
24/10/2022

County of incident
Kajiado

What form of Police misconduct are you alleging?
Shooting

Has the incident happened previously?
No

Who is the alleged perpetrator?
Police officer

Select either Retired/Serving
Serving

Are there any other victims?
No

Has IPOA received any notification in line with provision of National Police Service Act?
Yes

Did the incident result in any sexual assault?
No

Did the incident result in any arrest/detention?
No

Was the victim/complainant held for more than 24 h?
No

Was complainant taken to court following the arrest?
No

Was immediate medical attention required for the victim?
No

Was the complainant/victim physically safe?
No

Does the complainant need counselling?
No

Kindly explain circumstances that has led the complainant to lodge a complaint of Police Misconduct
AJIADO COUNTY :
AJIADO WEST SUBCOUNTY:
MAGADI POLICE STATION .

UB. SHOOTING

DEATH OF A FOREIGNER INCIDENT REPORT.

was reported to Magadi police station vide OB 14/23/10/2022 at 22.00hrs that along Kuenia farm/kamukuru marram a shooting incident involving GSU officers

Loading Feedback to Complainant records...

0 - 0 of 0 (0 selected)

Page 1

MEDICAL DETAILS

Complainant Medically Examined
No

Attending Medical Officer Details

Findings of Medical Examination

Has the victim been tortured?
No

Has the torture resulted in serious injuries?
No

Has the torture resulted in Death?
No

Was the death in police custody?
No

SUSPECT DETAILS

Suspect Officer Identified?
NO

Suspect Officer Details

First Name

Last Name

Var

Loading Police Officer records...

0 - 0 of 0 (0 selected)

Page 1

DETENTION/HOLDING DETAILS

Complainant held in Police Custody
No

Name

ity

0 - 0 of 0 (0 selected)

Page 1

COMPLAINANT EVIDENCE

Name

Categor

Co

0 - 0 of 0 (0 selected)

Page 1

WITNESSES

Any Witnesses Present

No

Surname

First Nai

Loading Witness records...

0 - 0 of 0 (0 selected)

Page 1

ed and one Pakistan national namely ARSHAD MOHAMMED SHARIFF years had been fatally shot while he was in a motor vehicle registration KDG 200M along the road when the deceased and his brother KHURRAM D were driving back to Nairobi. It started when officers from Dci starehe obi circulated a report of theft of a motor vehicle/abduction vide OB 23/10/2022 that one Douglas Wainaina parked his motor vehicle registration nber KDJ 700F outside an electrical shop and left his son namely Dancan nau inside the said motor vehicle. On return, he found the said motor vehicle sing. He reported the said incident at Pangani police station where the officers ated the son at Olosuritia ACK Church within Kiserian in Kajiado. He was also ated at Kiserian dam estate and later at Olepolos Hills. Gsu officers from Magadi ning school were mobilised Dci officers from p gani who were trailing the alleged abduction incident together with Dci rian cornered the the same at delta petrol station located at magadi- isinya d junction. It was established that the occupant of the car in subject matter had been abducted but he was the son of the reportee who intentionally left his er after he had entered into shop to buy electricals materials. The Dci officers n starehe subcounty alerted the oc GSU since the reported alleged abduction dent trails were showing leads from Nairobi towards magadi road direction. Oc magadi training school acted appropriately by mobilising his officers. Scene visited by SCPC Kajiado West, oc Dci Kiserian and the ocs magadi together n the scenes of crime personnel from Kajiado North subcounty. From the scene was near Tinga Market, it was established that Kurram Ahmed and his brother (deceased) were driving along Kuenia-kamukuru rough road and before they ched the Kiserian-magadi road, they found the road blocked using small stones. y decided to pass them. It was then they heard gun shots towards their vehicle cted from the front and rear. They did not stop and proceeded with the ney. Khurram called Naqar Ahmed also a Pakistan national who reside at Tinga informed him about the Incident. He advised them to pass his place and on al at the main gate, found his brother had died with a gun shot wound on the d which had penetrated from the back of his head and exited at the front side is head. Upon scrutiny of the said motor vehicle, it had a bullet hole on the left of the windscreen on the side the deceased was sitting, two bullet holes on rear left back screen, one bullet hole on the rear right door, four holes right of the boot and one front right tyre that had been deplated. The said Pakistan onals claim that they are developers and reside in Nairobi. Scene was umented and the body taken to Chiromo mortuary awaiting postmortem. Case

er forms of Police misconduct

any evidence to support the your complaint (Documents, photos, etc.)
NO

5 & OUTCOMES

cify Issues Authority to Inquire
oting Incident

ion to be taken expected by nplainant estigate	Outcome expected by Complainant Justice
--	--

other Relevant information

ERNATE COMPLAINT DETAILS

nplaint Subject to irt Proceedings	Complaint Lodged in other institution No	Institution Lodged
---------------------------------------	--	--------------------

ged Complaint Detail

Approval & HOC Comments

219
D1
22/10/22
the deadline for the work.
C.E.O
Pse take to
issue up DPP post
25/10/2022

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

Telegraphic address: "Personnel", Nairobi
Telephone: Nairobi 2732090/2732240
Mobile: 0723202888/ 0787880580
Fax: 2243524/2251808
Email: info@odpp.go.ke
When replying please quote:
REF. ODPP/ES/GEN

ODPP House,
Ragati Road, Upper Hill
P.O. BOX 30701 - 00100
NAIROBI

Date: 24th October, 2022

Ms. Anne Makori
Chairperson
Independent Policing Oversight Authority
NAIROBI

Dear Anne,

RE: INVESTIGATIONS INTO DEATH OF ARSHAD MOHAMMED SHARIFF

Reference is made to the above matter.

The Office of the Director of Public Prosecutions has noted with concern reports circulating on social and mainstream media relating to the death of Arshad Mohammed Shariff, a Pakistani journalist, who was allegedly shot at a police roadblock in Kajiado County.

Pursuant to Section 5 (2)(b) of the Office of the Director of Public Prosecutions Act, No. 2 of 2013; and Section 7 (1)(a)(ix) of the Independent Policing Oversight Authority Act, No. 35 of 2011, I hereby direct that you immediately institute investigations into the said allegations and submit the relevant investigations file within fourteen (14) days hereof.

NOORDIN M. HAJI, CBS, OGW
DIRECTOR OF PUBLIC PROSECUTIONS

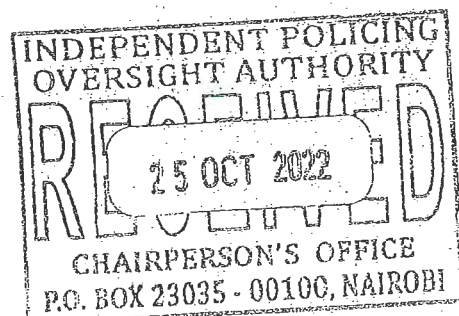
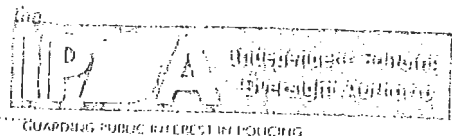




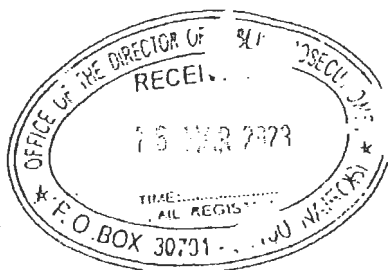
Exhibit 3
SWORN/DECLARED before me this
day of Jan 2024 at Nairobi
Republic of Kenya
Commissioner for Oath/Taking



IPOA/ADM.F/ODPP/3/1/Vol. VII/

16th March 2023

Mr. Noordin Haji, CBS, OGW,
Director of Public prosecutions,
Office of the Director of Public Prosecutions,
ODPP House, Ragati Road, Upper Hill,
P.O Box 30701-00100,
NAIROBI.



Dear *DPP*,

RE: RESUBMISSION OF INVESTIGATIONS FILE ON INVESTIGATIONS INTO THE CIRCUMSTANCES SURROUNDING THE FATAL SHOOTING OF ARSHAD SHARIF MUHAMMAD ON 23RD OCTOBER 2022 WITHIN KAMUKURU AREA, KAJIADO COUNTY

The Independent Policing Oversight Authority (IPOA) is a State Agency established under the Independent Policing Oversight Authority (IPOA) Act, No. 35 of 2011 with powers to investigate complaints against police.

The Authority acknowledges with thanks receipt of your letter on the above subject matter, dated 21st February 2023. The Authority has addressed the Gaps identified as hereunder;

1. Clarification as to why D1 did not go to the hospital or police authorities immediately after the shooting but instead went to Oletepesi farm;
The area is vast and the nearest medical facility is at Oletepesi, The nearest police stations are Magadi and Kiserian D1 states that he was terrified, confused and feared that he was being pursued, he sought advice from D2 who told him to seek refuge at Oletepesi farm.
2. Clarification on the time of death given in relation to the account narrated by D13(DCIO Kiserian) regarding the status of the deceased body;
The government Pathologist Dr. Johansen Oduor has clarified in his further report attached as Exhibit **C1(iv)-(v)** that it is difficult to ascertain the time of death or if the deceased died immediately or survived for some time after he sustained the injuries. D13's evidence is therefore unreliable as he cannot give an opinion as to the time of death since he is not an expert in the medical field.
3. Clarification on blood spatter patterns in the car in regard to the deceased sitting position, the effect of his fastened seat belt the nature of injuries he sustained the shape and the size of blood droplets and the impact of the blood spatter;
A blood forensic expert visited the location of the vehicle and conducted an analysis on the blood spatter and made a report (**see C11**)

4. Clarification on the presence of six Americans in the farm and the absence of their statements, what had they gone to do in the property, records of activities, how they gained entry to the country and on whose invitation? According to D2 and D14, The Americans had been invited by US Embassy and left the country shortly after the incident as they had concluded the training and were not at Ammodump. They were not in the farm when the investigators visited the farm a day after the incident. This has been captured in the statements of D2 and D14. The Authority has written to the respective government agencies for further information and is yet to receive feedback.
See J 20 & J23

5. Clarification on the make data and presence of deceased digital devices at the time of the incident, where are the devices now and any data extracted? Was geo location and subscription data requested from mobile subscriber by IPOA?

Investigations have established that the devices were handed over to officers from the National Intelligence Service. The Authority wrote to the NIS and the Exhibits were handed over to IPOA. The same have since been forwarded to Cybercrime for analysis. (See Exhibit Memo B 28)

6. Extraction of CCTV footage at the farm to show condition of D1 and the deceased as they left Ammodump ranch.

The ranch does not have CCTV surveillance.

7. Extraction of CCTV footage from the deceased residence in Nairobi and to be subjected to forensic analysis and a report generated. The coverage to include two weeks before and after the incident;

The CCTV footage of the period between 20th October 2022 and 31st October 2022 was extracted by D2 before it was overwritten. This was handed over to the investigators and upon review, The deceased is seen leaving the house on 22nd October 2022 at around 2102hours together with D1 boarded Vehicle Reg Number KDG 200M at the basement parking at around 2106hours and left the gate at around 2107hours;

8. A statement from the caretaker or the property management firm in regards to who owns the house that the deceased resided in and who was the registered tenant if any at the time of the incident;

The house where the deceased resided belongs to D2 who was hosting him.
See B20 (Lease hold Title no 230510)

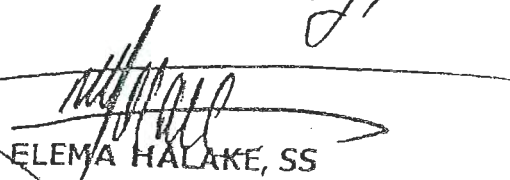
9. The phones of all the five suspects, D1, D2 and D14 should be subjected to forensic analysis and reports generated, IPOA should get data from the respective service providers;

There is subscriber data for all the suspect officers D1, and D2. The phones of E2, E3, E4 and E5 were seized, analyzed and the resultant report is attached.
See C10. The data is also contained in a CD. E1 stated that he lost his mobile phone. The mobile phones of D1, D2 and D14 have not been seized since they are not suspects in the matter and their mobile data is sufficient.

10. Establish if any of the suspect's vehicles had a car tracking system and the movements of the cars that day;
The Authority has written a letter to the PS National Treasury requesting for tracking data of the vehicle GKB 626 Y which was being used by the suspects during the time of the incident but it's yet to be responded to. (See J21)
11. Explanation on the radio communication to pursue the alleged stolen motor vehicle. Was any communication relayed to the suspects who had been assigned to intercept the stolen vehicle and rescue the driver?
D10 states he relayed the information to CI Julius Some. D6 further stated that he relayed the information to CI Julius Some that they had shot a wrong person.
12. There is need to analyze all the phones of all the officers who responded to the report of the stolen motor vehicle starting from D10's phone. He is the first officer who unofficially circulated the news of the missing motor vehicle;
The phones of E2, E3, E4 and E5 have been sized and analyzed. Further mobile data for E1, E2, E3, E4, E5, D1, D2, D3, D6, D7, D10 and D11 was obtained and is attached as C5.
13. There is need to submit the map of the Ammodump Ranch owned by D2 and D3 including property licenses, authorized activities, and ownership. What is the size of Ammodump in acreage?
The Title deeds for the Ammodump Ranch **Kajiado/Kilonito/354 and Kajiado/Kilonito/83** have been obtained and attached.(See B21 and B22). The approved activities are yet to be provided by the relevant agencies. See J 20 & J23
14. Information as to whether law enforcement officers train at the Ammodump shooting range? Which group of officers usually train in the said camp and authorization provided by the relevant agencies;
According to D2 and D14 Kenyan police officers from the specialized units train at Ammodump, a letter was written to the IG of Police for clarification. (See J 21). The letter is yet to be replied.
15. What is the immigration status of D1, D2 and D3? There is need to get accurate information from the Director Immigration services.
D1 and D2 are Pakistan Nationals with permanent residence status in the Republic of Kenya. D3 is a Kenyan citizen. (See B21).

Yours

sincerely,

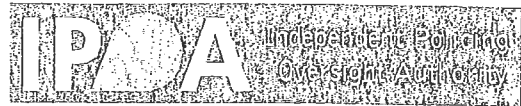

ELEMA HALAKE, SS

DIRECTOR/CHIEF EXECUTIVE OFFICER



REPUBLIC OF KENYA

THE INDEPENDENT POLICING OVERSIGHT AUTHORITY (IPOA)
P.O. BOX 30701 - 00100, NAIROBI
29th May 2023
Mr. Noordin Haji, CBS, OGW,
Director of Public Prosecutions,
Office of the Director of Public Prosecutions,
ODPP House, Ragati Road, Upper Hill,
P.O. Box 30701-00100,
NAIROBI.

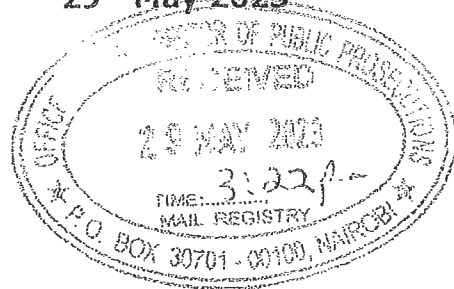


GUARDING PUBLIC INTEREST IN POLICING

IPOA/ADM.F/ODPP/3/1/Vol. VII/

29th May 2023

Mr. Noordin Haji, CBS, OGW,
Director of Public prosecutions,
Office of the Director of Public Prosecutions,
ODPP House, Ragati Road, Upper Hill,
P.O Box 30701-00100,
NAIROBI.



Dear Sir,

RE: RESUBMISSION OF INVESTIGATIONS FILE ON INVESTIGATIONS INTO THE CIRCUMSTANCES SURROUNDING THE FATAL SHOOTING OF ARSHAD SHARIF MUHAMMAD ON 23RD OCTOBER 2022 WITHIN KAMUKURU AREA, KAJIADO COUNTY

The Independent Policing Oversight Authority (IPOA) is a State Agency established under the Independent Policing Oversight Authority (IPOA) Act, No. 35 of 2011 with powers to investigate complaints against police.

The Authority acknowledges with thanks receipt of your letter on the above subject matter, dated 27th March 2023. The Authority has addressed the five outstanding Gaps identified as hereunder;

1. **Establish if any of the suspect's vehicles had a car tracking system and the movements of the cars that day;**

The Authority has obtained vehicle tracking data for motor vehicle Reg No GKB 626 Y which was being used by the suspects during the time of the incident (See B29). On the date of the incident the data shows that the vehicle moved but within the Magadi GSU general area including the scene of the incident. The vehicle never moved to Ammodump Camp.

2. **There is need to submit the map of the Ammodump Ranch owned by D2 and D3 including property licenses, authorized activities, and ownership. What is the size of Ammodump in acreage?**

The Title deeds for the Ammodump Ranch Kajiado/Kilonito/354 and Kajiado/Kilonito/83 have been obtained and attached. (See B21 and B22). The approved activities and relevant licenses are as contained in B 28.

3. **Information as to whether law enforcement officers train at the Ammodump shooting range? Which group of officers usually train in the said camp and authorization provided by the relevant agencies;**

According to D2 and D14 Kenyan police officers from the specialized units train at Ammodump, The US Embassy has confirmed that they conducted multiple training courses for Kenyan Police officers in October 2022. (See

J27), a similar letter was written to the IG of Police for clarification. (See J 21). The letter is yet to be replied.

4. **Clarification on the make data and presence of deceased digital devices at the time of the incident, where are the devices now and any data extracted? Was geo location and subscription data requested from mobile subscriber by IPOA?**

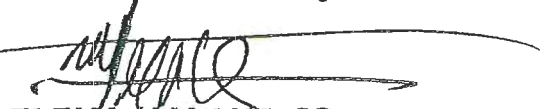
Investigations established that D2 had handed over the deceased iPhone and IPAD to officers from the National Intelligence Service. The Authority wrote to the NIS and the Exhibits were handed over to IPOA. The same have since been forwarded to Cybercrime for analysis. (See Exhibit Memo B 28). However, the devices have not been analyzed since the software licenses have expired.

5. **The mobile data of the Airtel number which was being used by the deceased has been obtained (See C 5x).**

Analysis of the data reveals that on that fateful day, no signals were realized owing to the fact that Airtel has no coverage within that area of incident.

The file is hereby resubmitted to you for advice.

Yours *Sincerely,*


ELEMA HALAKE, SS
DIRECTOR/CHIEF EXECUTIVE OFFICER

